MONTANA LEGISLATIVE HISTORY

Chapter 410 1979

Bill H _____ S 516 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	_____	C	Hearing Date(s)	_____	C
	3/8	✓ C		2/17	✓ C
	_____	C		_____	C
	_____	C		_____	C
Date Out	_____	C		2/17	✓

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

STATE LAW LIBRARY

AUG 10 1979

OF MONTANA

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

46th Legislative Session
January 3, 1979 to April 20, 1979

ROBERT L. ANDERSON
THOMAS R. CONROY
AUBYN CURTISS
FRED DAILY
WILLIAM DAY
RALPH EUDAILY
POLLY HOLMES
DENNIS IVERSON
MICHAEL KEEDY
DANIEL KEMMIS
KERRY KEYSER
EARL LORY
ROBERT PAVLOVICH
JONAS ROSENTHAL
AUDREY ROTH
CARL SEIFERT
JACK UHDE
WES TEAGUE, Vice-chairman
JOHN P. SCULLY, Chairman

MARY ELLEN CONNELLY, Secretary
LARRY WEINBERG, Staff Attorney

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 404	change time - purchase money security interest. etc.	2/23	Kolstad	Thurs. 3/8	be concurred in	3/17
SB 426	criminal offender is nondangerous for purposes of parole, etc.	2/23	Stimatz	Thurs. 3/8	as amended be concurred	3/15
SB 431	notice requirements for dental, license, etc.	2/23	Hafferman	Thurs. 3/8	as amended be concurred	3/16
SB 461	rivise appointment procedures etc. for city attorneys	2/23	S. Brown	Thurs. 3/8	be concurred	3/14
SB 468	rivise - courts of limited jurisdiction	2/23	Stimatz	Thurs. 3/8	as amended be concurred	3/16
SB 516	custody orders, temporary, etc.	2/23	Turnage	Thurs. 3/8	be concurred	3/17

SENATE BILL NO. 516

INTRODUCED BY Turnage

By request of Senate Judiciary Committee

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW CONCERNING CUSTODY ORDERS; TO ALLOW EX PARTE TEMPORARY CUSTODY ORDERS; TO DELETE THE 2-YEAR RESTRICTION ON SEEKING MODIFICATION OF A CUSTODY ORDER; AMENDING SECTIONS 40-4-213, 40-4-219, AND 40-4-220, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-213, MCA, is amended to read:

"40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing or ~~if~~ under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated."

Section 2. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. ~~(1) No motion to modify a custody decree may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.~~

~~(2)~~(1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers

seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

~~(3)~~(2) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment."

Section 3. Section 40-4-220, MCA, is amended to read:

"40-4-220. Affidavit practice. (1) A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made by a court and it would be in the child's best interest

under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order."

-End-

We would pick up all of the cost. We have reached an agreement with Mike Greely and the room and board will be $10 a day. They will be able to use the police academy facilities.

MARGARET DAVIS: League of Women Voters. We have long held the position that they should be better trained, the judges in the courts of limited jurisdiction. There is a constitutional question that has been raised about parking tickets. In the end it will be more cost effective and also much better.

DAN MIZNER: League of Cities and Towns. He discussed third-class cities, and then presented amendments he would like the committee to consider. On page 3, lines 1 through 5, if the city judge is a justice of the peace. On page 4, line 4, the city or town would provide facilities and we think that is adequate. We feel there is some conflict in the language, on page 4, line 4. He presented prepared copies of the amendments.

REPRESENTATIVE DAY: How are you going to provide this time, if he is to attend this training before he serves. It was mentioned that they could tell how much time they spend and keep track of it.

Discussion about the position being an elected office and Representative Keyser wondered, are you saying that some of the JP's are double-dipping as a police judge. Mr. Mizner said that there is another bill around somewhere that clarifies this.

REPRESENTATIVE KEYSER: Isn't it true that the JP has to be in the county seat. Mr. Jenson answered, one has to reside in the county seat but another JP could be appointed to serve in the other specified area. A JP can sit as a city judge to hear city ordinances.

There was no other discussion and the hearing closed on Senate Bill No. 468.

SENATE BILL NO. 516: Senator Turnage. This bill would revise the law relating to custody orders. It will do two things. Number 1, it will allow a district judge in a custody matter to make a temporary custody order. Number 2, it allows a motion to modify a custody decree earlier than two years. The old law would not allow this. Quite often, little thought is given to what might happen to a child six months from now.

SENATOR VAN VALKENBURG: The part of the bill that I was involved with were the amendments on pages 3 and 4. They give the court authority to act without a hearing for temporary custody. It may not be in the best interests of the child to be in the custody of one party for a long length of time. This would be within a twenty day period.

SENATOR TURNAGE: This bill was really the law prior to 1975 and in 1975 we adopted the model marriage and divorce act.

There was no discussion and the hearing closed on Senate Bill No. 516.

SENATE BILL NO. 461: Senator Steve Brown. This will revise the appointment procedures and duties for city attorneys. On page 2, lines 9 and 10, we are putting into the statutes what is now being done. It would also provide additiona duties for the city attorney. Section 4, they need a formal opinion oftentimes. In addition to duties set forth by statute on a question by questions basis they can contract for other duties. They can contract separately.

DAN MIZNER: League of Cities and Towns. It is a problem that you may not realize. He discussed cities he was familiar with that had contracted out.

REPRESENTATIVE DAY: Where are the cities that contract with North Dakota, and the answer was, a group up by the border, Westby and Culbertson.

REPRESENTATIVE EUDAILY: What about my bill? Mr. Mizner said they did not want to confuse the attorney issue with the other bill.

REPRESENTATIVE KEEDY: Does it include the city attorney, and Senator Brown said, yes, in section 4.

DAN MIZNER: Explained section 2 and sections 3 and 4.

Representative Keedy led discussion about the fact that there is no maximum allowed for contracting. Mr. Mizner said, what we are trying to do is segregate out the city attorneys. This section includes all employees of the city.

Representative Keyser wondered whether this affects the city manager form of government. Discussion about this. There was no other discussion and the hearing closed on Senate Bill No. 461.

The meeting adjourned at 9:00 a.m. to go into executive session.

John P. Scully, Chairman

JPS:mjc

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 17, 1979

The meeting was called to order by Chairman Scully at 10:00 a.m. in room 436 of the Capitol Building on Saturday, March 17. All members were present with the exception of Representatives Daily, Keedy and Kemmis.

SENATE BILL NO. 291: This bill had been held in committee until action had been taken on Senate Bill 65, the elections revision. Representative Holmes moved "be concurred in as already amended. The motion carried with the vote unanimous. Representative Rosenthal will carry.

SENATE BILL NO. 395: Representative Curtiss moved "be concurred in". The motion carried with Representatives Seifert, Conroy and Pavlovich voting "no". Representative Iverson will carry on the floor.

SENATE BILL NO. 519: Representative Keyser moved "be not concurred in". These sections were the ones dropped in 1977 and suggested as a committee bill instead of being put into SB 65. The motion failed by roll call vote 8 to 7, with 3 members absent.

Representative Keyser moved to amend page 1, line 25 by striking "or integrity or which tends to injure or defeat him at the polls". The motion carrie with Representatives Holmes, Lory, Eudaily, Keedy and Teague voting "no". Representative Iverson moved to amend line 17, page 1 and strike "only" and insert failure to remove billboards, yard signs, o posters on election day is not considered a violation". He also moved to amend page 1, line 24 by striking the comma and inserting " The motion to amend carried with the vote unanimous.

Representative Holmes moved "be concurred in as amended". The motion carried with Representatives Seifert, Conroy and Keyser voting "no".

SENATE BILL NO. 112: Representative Lory commented that this bill clears up some confusion. After som discussion, Representative Conroy moved to table. The motion carrie with the vote unanimous.

SENATE BILL NO. 232: Representative Holmes moved the committee reconsider its action taken at an earlie meeting. The motion failed with only two members voting "yes".

SENATE BILL NO. 516: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Seifert will carry on the floor.

FORTY-SIXTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY - SENATE

	SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
97.	SB - 492	2/13/79	2/19/79	transferred 2/19/79						
98.	SB - 495	2/13/79	2/19/79	2/19/79			2/19/79			
99.	SB - 511	2/14/79	2/19/79	2/19/79	2/19/79					
100	SB - 516	2/15/79	2/17/79	2/17/79	2/17/79					
101.	SB - 519	2/16/79	2/19/79	2/19/79			2/19/79			
102	SJR - 12	1/31/79	2/8/79	tie vote taken to floor of Senate						
103	SJR - 27	2/15/79	2/17/79	2/17/79	2/17/79					
104.	SJR - 33	3/17/79								

Use a separate sheet for Senate, House Bills, and Resolutions

Senator Towe questioned why is it we are repealing the small claims court without mentioning it in the title. Mr. Jensen stated that this was not the intent and he explained some problems they have had and they want to work on this. Joan Mayer from the Legislative Council stated that this was in the draft that came down to the council. Senator Towe stated that if you utilize that procedure then the attorneys are not involved and Senator Lensink said that the district court small claims court has not been used.

Senator Towe said that he would make a substitute motion to delete section 11 on the repealers. The motion carried, with Senator Anderson voting no.

Senator Galt moved that the bill do pass as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 516:

This was a Senate Judiciary Committee bill, which is an act to revise the law concerning custody orders, to allow ex parte temporary custody orders, to delete the two-year restriction on seeking modification of a custody order, etc. Senators Turnage and Van Valkenburg explained the changes in this bill.

Senator Lensink asked if they had had a chance for Senator Turnage to go over this bill and Senator Turnage said that he was satisfied with it and he stated that we have locked the hands of district judges when some real and apparent problem exists and they have no temporary resources and that is what the law was for many, many years.

Senator Towe said that the main danger to there being an abuse of this temporary order and it will be an automatic thing.

Senator Turnage moved that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE JOINT RESOLUTION 27:

This is a resolution to urge the Montana Supreme Court to appoint laymen to the Commission on Practice and to require the commission to report biennially to the legislature. This bill was requested by the committee.

Senator Brown moved that this bill do pass. The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 431:

Senator Turnage questioned if they think they will abuse this and Senator Towe said that there is no warning any more. Senator Brown stated that there really is a warning and they will try to work it out without going to a hearing and if there is an abuse, I will come back and put this back in.

Date 2-16-79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

STANDING COMMITTEE REPORT

February 17, 19 73

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 515

Respectfully report as follows: That Senate Bill No. 515

DO PASS

Everett R. Lensink Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE BILL NO. 516

INTRODUCED BY TURNAGE

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW CONCERNING CUSTODY ORDERS; TO ALLOW EX PARTE TEMPORARY CUSTODY ORDERS; TO DELETE THE 2-YEAR RESTRICTION ON SEEKING MODIFICATION OF A CUSTODY ORDER; AMENDING SECTIONS 40-4-213, 40-4-219, AND 40-4-220, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-213, MCA, is amended to read:

"40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing or~~, if~~ under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated."

Section 2. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. ~~(1) No motion to modify a custody decree may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.~~

~~(2)~~(1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

REFERENCE BILL

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

~~(3)~~(2) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment."

Section 3. Section 40-4-220, MCA, is amended to read:

"40-4-220. Affidavit practice. (1) A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made

by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order."

-End-